

DECLASSIFIED
PA/HO Department of State
E.O. 12958, as amended
September 6, 2007

RS/R FILES

Attention Mrs Mallet
Keep this study together.

DEPARTMENT OF STATE
WASHINGTON

June 2, 1970

S/S - 7890

Copies To: [REDACTED]

Dear Dave:

I am writing to request your review of the current State/Defense instructions on termination of the USG-Libyan Government Economic Assistance Agreement. Paragraph C of the Agreement provides for the payment of "\$1,000,000 per year for each of the calendar years 1965 through 1971." Nevertheless, the State/Defense airgram instructs Ambassador Palmer to inform the Libyan Government that no more payments will be made since the US has in fact overpaid due to termination of our effective use of Wheelus AFB as of November 19, 1969.

The legal merits of this complicated issue have been the subject of differences between our lawyers for some months. Our respective legal offices differ essentially over whether we are legally obligated to pay for our effective use of Wheelus in 1968 and pro rata in 1969, based on Paragraph C of the Economic Assistance Agreement (the State position), or whether the USG has paid more than legally required (the DOD position constructed from the negotiating history). While the Legal Adviser's Office has accepted the DOD position as a plausible legal argument, it believes the more persuasive conclusion is that the timing of the payments, as well as their totality, were in consideration for Wheelus and that the USG is therefore obligated under Paragraph C of the Agreement to pay \$1,000,000 for 1968 and \$906,840 for 1969 (the pro rata amount through

The Honorable
David Packard,
Deputy Secretary of Defense.

AID (US) 4 LIBYA

REPRODUCTION

1-11-70 [REDACTED]

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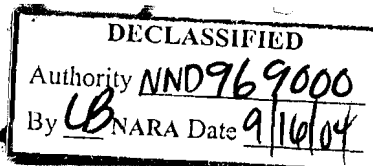
Authority NND 969000By LB NARA Date 9/16/04DECLASSIFIED
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November 19). This amount could, of course, be offset by any valid claim which we determined to exist and decided to press under international law arising out of early termination of our effective use of Wheelus and other areas at LARG initiative.

The Department is of the view, based on recent consultations with Ambassador Palmer, that submission of the current USG position would not be beneficial to overall USG interests. We believe that it would be difficult to present, inasmuch as it could not be supported by any written understanding with the Libyan Government, and that it would almost certainly become the object of a dispute. One possible LARG reaction would be the demand that unpaid amounts under the Economic Assistance Agreement be offset against the \$7,000,000 due the USG under the 1967 F-5 contract. Another reaction would be the contentious filing of claims in connection with Wheelus withdrawal prior to the June 30, 1971 deadline provided in the December 23, 1969 Agreed Minute.

The policy rationale underlying our decision to withdraw from Wheelus AFB was based on our desire to remove an important stumbling block from USG-LARG relations and to develop a fresh start. Having made this basic decision, we believe it important to complete our final withdrawal in a manner which promotes rather than detracts from this objective. Such has been our conduct in other areas of the Wheelus withdrawal. The Libyans have fulfilled their understanding thus far to facilitate our withdrawal. Adherence to our present position would, in our view, be inconsistent with our general policy. Despite uncertainties in our relationship with Libya at this time, and in recognition of the importance of other US interests in that country, we wish to avoid positions on Wheelus, where possible, which we consider likely to adversely affect our overall interests.



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I would therefore appreciate your looking into this matter in the light of the above points and would hope that you could concur in the attached draft telegram which would authorize the Ambassador to acknowledge that we owe \$1,906,840 under the Economic Assistance Agreement but reserve our right to present any valid claim we may wish to present under international law and our intention of including this amount in the discussion of other outstanding financial questions in the near future. There is some urgency to this as we should send revised instructions to Ambassador Palmer before the completion of the withdrawal from Wheelus and the termination of the Defense Facilities Agreement which, as you know, is imminent.

Sincerely,


U. Alexis Johnson

Enclosures:

Memorandum of Law
Draft Telegram

Clearances:

PM - Mr. Stoddard (substance)
L - Mr. Rhineland (draft)
AF/N - Mr. Blake
H - Mr. Leahy

AF/N:RSSuddarth:L/AF:EVerville:am
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